

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELECTRIC MIRROR, LLC, a Washington  
limited liability company,

Plaintiff,

vs.

AVALON GLASS AND MIRROR CO., a  
California corporation,

Defendant.

CASE NO. 2:16-CV-00665-RAJ

PROPOSED JOINT PRETRIAL  
ORDER

**I. JURISDICTION**

Jurisdiction is proper in the United States District Court Western District of Washington under 28 U.S.C. § 1332, because Electric Mirror, LLC, does not share citizenship with Avalon Glass and Mirror Co. and the amount in controversy exceeds \$75,000. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claim occurred in this judicial district.

## II. CLAIMS AND DEFENSES

Electric Mirror accepts the prior rulings of the Court, and it reserves its appellate rights regarding past rulings adverse to EM. Based on the status of the case, EM intends to pursue at trial the claims and defenses summarized as follows:

## Claims

1. Breach of Express Warranty: Free from Defects, Normal Handling
2. Breach of Express Warranty: Fitness for a Particular Purpose
3. Breach of Implied Warranty: Fitness for a Particular Purpose
4. Breach of Contract
5. Negligence

## Affirmative Defenses to Avalon's Counter Claims

1. Setoff
2. Unjust Enrichment
3. Equitable Estoppel

Avalon anticipates presenting the following claims and affirmative defenses at trial:

### Avalon's Affirmative Defenses to Electric Mirror's Claims:

1. Comparative Fault of Plaintiff
2. Comparative Fault of Third Parties
3. Modifications of Product
4. Misuse of Product
5. Failure to Provide Notice
6. Mitigation of Damages

### Avalon's Consolidated Claims:

1. Breach of Contract
2. Quantum Meruit

3. Account Stated

4. Open Book Account

### III. ADMITTED FACTS

Jointly admitted facts material to Electric Mirror's case:

1. None

Jointly admitted facts material to Avalon's case:

2. Electric Mirror withheld \$245,639.27 in payment on invoices unrelated to the Mandalay Bay project (the "Unpaid Invoices"), as a setoff to sums it alleges are owed to Electric Mirror from Avalon.

3. The Unpaid Invoices were issued between December 9, 2015 and April 12, 2016.

4. Electric Mirror asserts affirmative defenses of setoff, unjust enrichment, and equitable estoppel as a basis to withhold payment of Unpaid Invoices.

### IV. ISSUES OF LAW

A. **Electric Mirror anticipates the following issues of law will be presented at trial.**

1. Whether Avalon is liable to Electric Mirror under the express warranty of fitness for buyer's intended use in the Electric Mirror Purchase Orders applicable to mirror sales, when it knew Electric Mirror was purchasing the mirrors for use at a MGM hotel in Las Vegas. RCW 62A.2-313.
2. Whether Avalon is liable to Electric Mirror under the express warranty of the Electric Mirror Purchase Orders that the mirrors would be free from defects in materials and workmanship. RCW 62A.2-313.
3. Whether Avalon is liable to Electric Mirror when Avalon's description of MirroView or express affirmations or promises related to MirroView became a basis for Electric Mirror to purchase MirroView from Avalon. RCW 62A.2-313
4. Whether Avalon is liable to Electric Mirror under the implied warranty of Fitness for Particular Purpose when Avalon had reason to know of the particular purpose for which Electric Mirror was purchasing the mirrors and

Electric Mirror was relying on Avalon's skill or judgment to select or furnish suitable goods. RCW 62A.2-315.

5. Whether Avalon's sales of MirroView mirrors to Electric Mirror were subject to the express factual representations made by Avalon or stated in the literature of Pilkington North America, when Avalon provided such materials or representations to Electric Mirror before selling MirroView mirrors to Electric Mirror. 62A.2-313.
6. Whether Electric Mirror was reasonably induced into accepting defective MirroView mirrors due to Avalon's assurances or by the difficulty in discovering the nonconformity. RCW 62A.2-608.
7. Whether Avalon is a merchant of mirror product and whether MirroView was fit for the ordinary purpose of hotel bathroom mirror. RCW 62A.2-314.
8. Whether Electric Mirror notified Avalon of defects within a reasonable time. RCW 62A.2-607(3).
9. Whether Electric Mirror properly rejected certain mirrors from Avalon. RCW 62A.2-602.
10. Whether Avalon is liable to Electric Mirror for direct damages when Avalon breached contractual and implied duties to Electric Mirror by selling defective and damaged products to Electric Mirror. RCW 62A.2-714
11. Whether Avalon is liable to Electric Mirror for consequential and incidental damages when Avalon breached contractual and implied duties to Electric Mirror by selling defective and damaged products to Electric Mirror. RCW 62A.2-714; 62A.2-715.
12. Whether Avalon was negligent in handling Mirrors it manufactured for Electric Mirror and delivered to Electric Mirror.
13. Whether Electric Mirror's admitted debt of \$245,639.27 to Avalon is setoff against the damages to Electric Mirror arising from Avalon's breach.

**B. Avalon anticipates the following issues of law will be presented at trial.**

1. Whether Avalon is liable to Electric Mirror for breach of an express warranty regarding goods being free from defects in materials and workmanship and in conformity with Electric Mirror's specifications.

1           2.     Whether Avalon is liable to Electric Mirror for the allegedly defective  
2 design of MirroView in the absence of any express or implied warranty against  
3 design defects.

4           3.     Whether Avalon is liable to Electric Mirror for breach of an express  
5 warranty that its product would be fit for Electric Mirror's intended use.

6           4.     Whether Avalon is liable to Electric Mirror for breach of an implied  
7 warranty that its product would be fit for Electric Mirror's intended use.

8           5.     Whether Electric Mirror notified Avalon of alleged defects within a  
9 reasonable time.

10          6.     Whether Electric Mirror relied on Avalon's skill or judgment to select  
11 or furnish suitable goods.

12          7.     Whether Electric Mirror properly rejected and/or revoked its  
13 acceptance of Avalon's products.

14          8.     Whether Electric Mirror's alleged damages were proximately caused, in  
15 whole or in part, by the acts of Electric Mirror.

16          9.     Whether Electric Mirror's alleged damages were caused, in whole or in  
17 part, by the acts of others, including but not limited to Electric Mirror.

18          10.    Whether Electric Mirror failed to mitigate its alleged damages.

19          11.    Whether Electric Mirror is liable to Avalon for breach of contract for  
20 failing to pay for delivered product.

21          12.    Whether Electric Mirror is liable to Avalon for quantum meruit/unjust  
22 enrichment for the value of delivered product never paid for.

23          13.    Whether Electric Mirror is liable to Avalon for accounts stated or upon  
24 an open book account for product delivered but never paid for.

25          14.    Whether any amounts owed by Electric Mirror to Avalon should be set  
26 off against any amounts owed by Avalon to Electric Mirror.

1 **V. EXPERT WITNESSES**

2 A. Each party shall be limited to one expert witness on the issue of liability  
3 pertaining to MirroView and the parties handling of the mirrors, and one expert  
4 witness on the issue of damages.

5 B. The names and addresses of the expert witnesses to be used by each  
6 party at the trial and the issue upon which each will testify is:

7 1. *On behalf of Plaintiff, Electric Mirror:*

8 **Richard McCurdy**, 11803 50th Ave Ct. NW, Gig Harbor, WA 98332  
9 Dr. McCurdy may be called on the issues related to MirroView.

10 **Douglas McDaniel**, 11100 NE 8th St. #400, Bellevue, WA 98004. Mr.  
11 McDaniel may be called on damages.

12 2. *On behalf of Defendant, Avalon Glass and Mirror Co.:*

13 **Keith Cline**, 700 South Industrial Way, Seattle, WA 98108. Mr. Cline  
14 may be called on the issues related to MirroView.

15 **William Partin**, 400 108th Ave N.E. Suite 615, Bellevue WA 98004.  
16 Mr. Partin may be called on damages.

17 **VI. OTHER WITNESSES**

18 A. The following witnesses are likely to testify on behalf of the Plaintiff:

19 **James Mischel Jr.**, 2112 N 64th St., Seattle, WA 98103

20 Mr. Mischel co-founded Electric Mirror in 1998, is the sole owner, and  
21 currently serves as its CEO. He may testify to the company's history and its place in  
22 the hospitality industry; processes of creating an electric mirror for high end hotels;  
23 relationship with Avalon prior to and during the Mandalay Bay project; early  
24 communications with Avalon and Avalon's representations pertaining to MirroView;  
25 selection and use of Pilkington MirroView products from Avalon for the Mandalay  
26 Bay project; model rooms; discovering defects in the products built for Mandalay  
27 Bay; travel to Las Vegas to observe the defects and initiation of remedial efforts in

1 July 2015 in Las Vegas; discovery of the latent defects in MirroView and overall  
2 process of the rebuild from September 2015 through March 2016; financial impact  
3 relating to the defects and damages during the rebuild time period; as well as other  
4 subjects that are relevant to this lawsuit.

5 **Don Jacques**, 15614 30th Ave. SE, Mill Creek, WA 98012

6 Mr. Jacques was Electric Mirror's COO during relevant times and may testify  
7 regarding Electric Mirror's discovery of the MirroView defects and efforts to mitigate  
8 Electric Mirror's loss and other remedial efforts; observations of defective products in  
9 Las Vegas and Everett; communications among the parties and MGM personnel;  
10 Avalon's products, quality control, handling, and delivery procedures; damages and  
11 other financial impacts on Electric Mirror relating to the defects and damage; as well  
12 as other subjects that are relevant to this lawsuit.

13 **Brett Kinney**, 25917 36th Ave. NW, Stanwood, WA 98292

14 Mr. Kinney was Electric Mirror's Director of Business Operations during  
15 relevant times and may testify regarding Electric Mirror's history with Avalon and  
16 its personnel; the history of Avalon recommending and selling MirroView to Electric  
17 Mirror before the Mandalay Bay project; Electric Mirror's Business Operations  
18 during relevant times, communications among the parties before, during and after  
19 the project; defects in the Mirrors and remedial efforts; payments for Avalon  
20 products, and damages, including financial impact relating to the defects and  
21 damage, as well as other subjects that are relevant to this lawsuit.

22 **Michael Andrich**, 24120 State Rt. 9 NE, Arlington, WA 98223

23 Mr. Andrich was Electric Mirror's Director of Global Sourcing during relevant  
24 times and may testify regarding communications among the parties, quality control  
25 at Avalon, defects in Avalon products, damage, and remedial efforts, Electric Mirror  
26 quality control, handling, and delivery procedures, and damages, including financial  
27

1 impact relating to the defects and damage; as well as other subjects that are relevant  
2 to this lawsuit.

3 **Steve Edelman**, 3520 158th Pl SE, Bothell, WA 98012

4 Mr. Edelman served as Electric Mirror's Quality Improvement Manager  
5 during relevant times and may testify regarding communications among the parties,  
6 quality control at Avalon, number of defective mirrors in EM's possession, defects,  
7 damage, and remedial efforts, and quality control, handling, and delivery  
8 procedures; as well as other subjects that are relevant to this lawsuit.

9 **Jon Johnston**, 12118 Possession Lane, Edmonds, WA 98026

10 Mr. Johnston was Electric Mirror's Senior Vice President for sales during  
11 relevant times and may testify regarding Electric Mirror's markets, products and  
12 sales process, model rooms, the impact of the rework on EM sales team and sales  
13 from Q3 2015 through the present; as well as other subjects that are relevant to this  
14 lawsuit.

15 **Irving Bernal**, 17556 5th Ave. NE, Shoreline, WA 98155

16 Mr. Bernal served as Quality Control Supervisor for Electric Mirror during  
17 relevant times and may testify regarding the parts and process necessary to build an  
18 electric mirror; his experiences with MirroView and processes affecting the  
19 Mandalay Bay first build, rework and rebuild; the evolution of quality control at  
20 Electric Mirror; and the number of defective MirroView mirrors in Electric Mirror's  
21 possession; as well as other subjects that are relevant to this lawsuit.

22 **Bill Schoonover**, 14250 Lake Hills Blvd, Bellevue, WA 98007

23 Mr. Schoonover served as Electric Mirror's Customer Service and Warranty  
24 Manager during the relevant times and may testify regarding the discovery of  
25 MirroView defects, communication with MGM, defects, damage, and remedial  
26



1 efforts, in Las Vegas and Everett, quality control, and delivery procedures; as well as  
2 other subjects that are relevant to this lawsuit.

3 **Eddie Nellis**, 12212 NE 97th St, Kirkland, WA 98033

4 Mr. Nellis served as Production Manager and Service Technician for Electric  
5 Mirror during relevant times and may testify regarding processes for building an  
6 electric mirror; model rooms, production standards; discovering defects at Mandalay  
7 Bay; inspecting and replacing mirror at Mandalay Bay; remedial efforts at Advantage  
8 Warehouse in Las Vegas and the Mandalay Bay; number of mirrors rejected because  
9 of scratches; go-back rooms inspection, process, and quantity of rooms; quality  
10 control in Las Vegas and changes in inspection process; description of Mandalay Bay  
11 hotel rooms; process of shipping back defective product to Electric Mirror; number of  
12 defective mirrors in Electric Mirror's possession; knowledge of timeline relating to  
13 hotel construction projects; as well as other subjects that are relevant to this lawsuit.

14 **Janet Bartlett**, 10727 NE 164th Ln., Bothell, WA 98011

15 Ms. Bartlett served as a Controller at Electric Mirror during the relevant times  
16 and may testify regarding Electric Mirror's internal business processes and data  
17 retention system, EPICOR; provide summaries of data and records relevant to  
18 Electric Mirror's damages, including among others: cost of glass, shipping, storage,  
19 materials, labor, and supplies as well as other subjects that are relevant to this  
20 lawsuit.

21 **James Curnew**, 1131 E. Marine View Dr., Everett, WA 98201

22 Mr. Curnew served as a Mainline Lead during relevant times and may testify  
23 regarding the parts and process necessary to build an electric mirror; his personal  
24 knowledge of MirroView and the heightened quality control during the Mandalay  
25 Bay rebuild; the process of receiving defective product from Mandalay Bay and  
26

1 salvaging mirror to be reshipped to Mandalay Bay; as well as other subjects that are  
2 relevant to this lawsuit.

3 **Doug McDaniel**, 11100 NE 8th St #400, Bellevue, WA 98004

4 Mr. McDaniel may testify regarding Electric Mirror's lost opportunity  
5 damages. His testimony will address his methodology and the data relied on for  
6 determining Electric Mirror's direct and consequential damages resulting from  
7 Defendants' delivery of defective and damaged product. His analysis will consider  
8 causes of lost production, the volume of lost production, revenue per unit, and  
9 variable costs resulting in a likely total net revenue loss of \$1-\$4 million; as well as  
10 other subjects consistent with his reports.

11 **Richard McCurdy**, 11803 50th Ave Ct. NW, Gig Harbor, WA 98332

12 Mr. McCurdy may testify regarding the latent defects in Mirroview™ mirrors  
13 as used for the Mandalay Bay project, including its susceptibility to micro-scratching  
14 and impacts of light on the visibility of those micro-scratches; applicable standards  
15 for inspection and handling; the evidence establishing that visible damage on the  
16 mirrors that MGM and Electric Mirror rejected was likely caused by Avalon; and the  
17 ways Mirroview™ technical and marketing materials contribute to its unsuitability;  
18 as well as other subjects consistent with his reports.

19 The following witnesses may testify on behalf of the Defendant:

20 **Jennifer Ziegler**, 9604 180th St SE #A, Snohomish, WA 98296

21 Ms. Ziegler served as the Purchasing Manager at Electric Mirror during  
22 relevant times. She may testify regarding Electric Mirror's business processes and  
23 data retention system, EPICOR; communications among the parties, payments for  
24 Avalon products, and order and delivery procedures; as well as other subjects that  
25 are relevant to this lawsuit.

1        **Tashia Wampler**, 2417 Maple St., Everett, WA 98201, regarding processing of  
2 mirror on the line for Mandalay Bay project, and quality control for original build  
3 and rework; as well as other subjects that are relevant to this lawsuit.

4        **Edwin Boyd**, 5636 26th Ave. SW, Seattle, WA 98106, regarding research and  
5 development of MirroView product, and testing Avalon products; as well as other  
6 subjects that are relevant to this lawsuit.

7        **Patrick Erickson**, 13740 27th Ave NE, Seattle, WA 98125, regarding design of  
8 mirror for Delano project, design of mirror for Mandalay Bay, compliance with  
9 governmental regulation regarding mirror product; as well as other subjects that are  
10 relevant to this lawsuit.

11        **Robert Hernandez**, 14705 Meadow Rd., Lynnwood, WA 98087

12        Mr. Hernandez served as the Manager of Inside Sales at Electric Mirror during  
13 relevant times and may testify regarding the life cycle of sales of mirror products to  
14 Electric Mirror customers; the sales positions at Electric Mirror and how projects and  
15 future sales suffered due to the Mandalay Bay rebuild; escalations of frustrated  
16 clients during the rebuild period as well as other subjects that are relevant to this  
17 lawsuit.

18        **Travis Boyd**, 14612 60th Pl. W., Edmonds, WA 98026

19        Mr. Boyd served in Residential Sales during relevant times and may testify  
20 regarding the impact of the rebuild on Electric Mirror's residential clientele and  
21 orders; as well as other subjects that are relevant to this lawsuit.

22        **Douglas Finefrock**, 2116 Northlake Ave., Snohomish, WA 98290

23        Mr. Finefrock served in the sales department during relevant times and may  
24 testify regarding impact of rework on EM's sales staff, and impact of Mandalay Bay  
25 rebuild on existing orders during the same period of rework; as well as other subjects  
26 that are relevant to this lawsuit.

**James (Doc) Mischel**, c/o Ellis, Li & McKinstry, PLLC,

Mr. Mischel co-founded Electric Mirror with his son in 1998 and served in a variety of roles in 2015. He may testify regarding communication with Avalon regarding MirroView; defects, damage, quality control, remedial efforts, handling, and delivery procedures; as well as other subjects that are relevant to this lawsuit.

**Others.** Electric Mirror reserves the right to present at trial the testimony of witnesses for whom Electric Mirror has designated their deposition testimony as required by the rules of this Court. Electric Mirror further reserves the right to supplement this witness list and to solicit testimony from all witnesses called to testify by Avalon. Current deposition designations include:

<u>Date</u>	<u>Deponent</u>	<u>Transcript</u>
12/7/2017	Jeff Wurzell	As marked electronically 10/1/2018
12/8/2018	Robert Mastrapa	As marked electronically 10/1/2018
1/4/2018	Robert House	As marked electronically 10/1/2018
1/4/2018	Baris Kaiser	As marked electronically 10/1/2018
3/12/2018	Genaro Martinez	As marked electronically 10/1/2018
3/12/2018	Gerald Materi	As marked electronically 10/1/2018
3/12/2018	Jorge Nuno	As marked electronically 10/1/2018
3/21/2018	Neil McSporran	As marked electronically 10/1/2018
3/21/2018	Patrick Gallagher	As marked electronically 10/1/2018
7/6/2018	Randy Steinberg	As marked electronically 10/1/2018

B. The following witnesses are likely to testify on behalf of the Defendant:

Avalon currently anticipates that the following witnesses **WILL** testify at trial:

1. Jeff Wurzell c/o Chuck Rullman, Corr Downs PLLC, 100 W. Harrison Street, Suite N440, Seattle, WA 98119, and Rudy Englund, Lane Powell PC, 1420 Fifth Avenue, Suite 4200, Seattle, WA 98101: Mr. Wurzell is the General Manager for Avalon. Among other subjects, he will testify regarding Avalon's experience and business practices in the glass and mirror processing industry; ordering, handling, processing, and sales of MirroView; Electric Mirror's ordering of products, including

1 MirroView; Avalon's sourcing, processing, inspection, and shipment of MirroView to  
2 Electric Mirror; his communications and interactions with Electric Mirror regarding  
3 the Mandalay Bay project; Electric Mirror's ordering and failure to pay for  
4 \$245,639.27 in custom mirror products; and all other subjects that are relevant to this  
5 lawsuit.

6 2. Randy Steinberg c/o Chuck Rullman, Corr Downs PLLC, 100 W.  
7 Harrison Street, Suite N440, Seattle, WA 98119, and Rudy Englund, Lane Powell PC,  
8 1420 Fifth Avenue, Suite 4200, Seattle, WA 98101: Mr. Steinberg will testify  
9 concerning his limited role in orally negotiating the pricing for MirroView sold by  
10 Avalon to Electric Mirror beginning in January, 2015, and all other subjects that are  
11 relevant to this lawsuit.

12 3. Genaro Martinez c/o Chuck Rullman, Corr Downs PLLC, 100 W.  
13 Harrison Street, Suite N440, Seattle, WA 98119, and Rudy Englund, Lane Powell PC,  
14 1420 Fifth Avenue, Suite 4200, Seattle, WA 98101: Mr. Martinez is the Office Manager  
15 for Avalon. Among other subjects, he will testify regarding Electric Mirror's ordering  
16 of products, including MirroView; his communications and interactions with Electric  
17 Mirror; Electric Mirror's ordering and failure to pay for \$245,639.27 in custom mirror  
18 products; and all other subjects that are relevant to this lawsuit.

19 4. Gerald Materi c/o Chuck Rullman, Corr Downs PLLC, 100 W. Harrison  
20 Street, Suite N440, Seattle, WA 98119, and Rudy Englund, Lane Powell PC, 1420 Fifth  
21 Avenue, Suite 4200, Seattle, WA 98101: Mr. Materi is the Shipping Supervisor at  
22 Avalon. Among other subject, he will testify regard Avalon's inspecting, packaging,  
23 and shipping of mirrors to customers, including Electric Mirror, and all other  
24 subjects that are relevant to this lawsuit.

25 5. Leif Ortegren, 34 Raymond Heights, Petaluma, CA 94952: Mr. Ortegren  
26 is a former sales representative for Pilkington. Among other subjects, he will testify  
27

1 concerning his experience as a sales representative in the glass and mirror industry;  
2 sales of the MirroView product; his personal observations of the uses and  
3 functionality of MirroView; his interactions, communications with, and visits to  
4 Electric Mirror's facilities in December 2014, December 2015, and January 2016; and  
5 all other subjects that are relevant to this lawsuit.

6 6. Neil McSporran, Ph.D., 2401 E Broadway St, Northwood, OH 43619: Dr.  
7 McSporran is a Manager of Business Development / Architectural & Technical  
8 Services at NSG Pilkington. Among other subjects, he will testify concerning  
9 Pilkington's development, marketing, and sale of MirroView; his visits to the Avalon  
10 and Electric Mirror facilities in 19 December 2015 and January 2016; and all other  
11 subjects that are relevant to this lawsuit.

12 7. Allen Beeman, c/o Jason Donovan, Foster Pepper PLLC, 1111 3rd Ave  
13 #3000, Seattle, WA 98101: Mr. Beeman is a former Vice President of Operations at  
14 Electric Mirror. He will testify regarding Electric Mirror's experience with the  
15 MirroView product prior to the Mandalay Bay project; the selection of the MirroView  
16 product for the Mandalay Bay project; the fabrication of mirrors by Electric Mirror  
17 for the "model rooms" at the Mandalay Bay; the processing of MirroView mirrors for  
18 the first build of the Mandalay Bay project; and all other subjects that are relevant to  
19 this lawsuit.

20 8. Tashia Wampler, 2417 Maple St., Everett, WA 98201: Ms. Wampler is an  
21 employee of Electric Mirror. She is anticipated to testify regarding the receipt,  
22 inspection, processing, and assembly of mirrors for the Mandalay Bay project, as well  
23 as other subjects that are relevant to this lawsuit.

24 9. Keith Cline, P.E., 700 South Industrial Way, Seattle, WA 98108: Mr.  
25 Cline is a metallurgical engineer with experience in failure analysis, laboratory  
26 testing, consulting, and manufacturing. Among other subjects, Mr. Cline will testify  
27

1 regarding the applicable standards for inspection and standards of care in handling  
 2 for the MirroView product; his inspections of certain mirrors related to the Mandalay  
 3 Bay project; his review and analysis of the findings of Electric Mirror's expert,  
 4 Richard McCurdy, Ph.D.; and all other subjects that are relevant to this this lawsuit.

5 10. William Partin, 400 108th Ave N.E. Suite 615, Bellevue WA 98004: Mr.  
 6 Partin is a Certified Public Accountant, Accredited in Business Valuation, Master  
 7 Analyst in Financial Forensics, and Certified Fraud Examiner. He will provide expert  
 8 testimony in response to Electric Mirror's claim for damages for lost profits and lost  
 9 business opportunities.

10 Avalon identifies the following persons as **POSSIBLE** witnesses at trial:

11 1. Michael Torres c/o Chuck Rullman, Corr Downs PLLC, 100 W.  
 12 Harrison Street, Suite N440, Seattle, WA 98119, and Rudy Englund, Lane Powell PC,  
 13 1420 Fifth Avenue, Suite 4200, Seattle, WA 98101: Mr. Torres is the Chief Financial  
 14 Officer for Avalon and Glasswerks LA, Inc. Mr. Torres will testify regarding Electric  
 15 Mirror's failure to pay for \$245,639.27 in custom mirror products; and all other  
 16 subjects that are relevant to this lawsuit.

17 2. James "Jim" Mischel, Jr., 2112 N 64th St., Seattle, WA 98103: In the  
 18 event Electric Mirror does not introduce his testimony, Avalon may call Mr. Mischel  
 19 to testify regarding Electric Mirror's experience in purchasing and processing  
 20 MirroView; the selection of MirroView for the Mandalay Bay project; rejections by  
 21 MGM and Bombard of mirrors delivered to Las Vegas for the Mandalay Bay project;  
 22 Electric Mirror's rebuild of mirrors for the Mandalay Bay project; Electric Mirror's  
 23 purported economic damages; and all other matters that are relevant to this lawsuit.

24 3. James "Doc" Mischel, M.D., c/o Kyle Netterfield, Ellis Li McKinstry,  
 25 2025 First Avenue, Penthouse A, Seattle, Washington 98121-3125: If Electric Mirror  
 26 does not introduce his testimony, Avalon may call Dr. Mischel to testify regarding  
 27



1 Electric Mirror's experience in purchasing and processing MirroView; the selection of  
2 MirroView for the Mandalay Bay project; rejections by MGM and Bombard of  
3 mirrors delivered to Las Vegas for the Mandalay Bay project; Electric Mirror's  
4 rebuild of mirrors for the Mandalay Bay project; Electric Mirror's purported  
5 economic damages; and all other matters that are relevant to this lawsuit.

6 4. Michael Andrich, 24120 State Rt. 9 NE, Arlington, WA 98223: In the  
7 event Electric Mirror does not introduce his testimony, Avalon may call Mr. Andrich  
8 to testify regarding Electric Mirror's experience in purchasing and processing  
9 MirroView; rejections by MGM and Bombard of mirrors delivered to Las Vegas for  
10 the Mandalay Bay project; Electric Mirror's rebuild of mirrors for the Mandalay Bay  
11 project; Electric Mirror's purported economic damages; and all other matters that are  
12 relevant to this lawsuit.

13 5. Don Jacques, 15614 30th Ave. SE, Mill Creek, WA 98012: In the event  
14 Electric Mirror does not introduce his testimony, Avalon may call Mr. Jacques to  
15 testify regarding Electric Mirror's experience in purchasing and processing  
16 MirroView; rejections by MGM and Bombard of mirrors delivered to Las Vegas for  
17 the Mandalay Bay project; Electric Mirror's rebuild of mirrors for the Mandalay Bay  
18 project; Electric Mirror's purported economic damages; and all other matters that are  
19 relevant to this lawsuit.

20 6. Melissa Morgan. Ms. Morgan is a former employee of Electric Mirror.  
21 She may be called to testify regarding the selection of MirroView for the Mandalay  
22 Bay project; the ordering of MirroView for the Mandalay Bay project; the reasons  
23 MGM rejected Electric Mirror's mirrors; Electric Mirror's alleged damages; as well as  
24 other subjects that are relevant to this lawsuit.

25 7. Michael Magee. Mr. Magee is a former employee of Electric Mirror. He  
26 may be called to testify regarding the receipt, inspection, processing, and assembly of  
27



1 mirrors for the Mandalay Bay project; selection of MirroView for the Mandalay Bay  
2 project; the reasons MGM rejected Electric Mirror's mirrors; Electric Mirror's alleged  
3 damages; as well as other subjects that are relevant to this lawsuit.

4 8. Irving Bernal, 17556 5th Ave. NE, Shoreline, WA 98155: In the event  
5 Electric Mirror does not introduce his testimony, Avalon may call Mr. Bernal to  
6 testify regarding the receipt, inspection, processing, and assembly of mirrors for the  
7 Mandalay Bay project; selection of MirroView for the Mandalay Bay project; MGM's  
8 rejection of Electric Mirror's mirrors; the rebuild of mirrors for the Mandalay Bay  
9 project; Electric Mirror's alleged damages; as well as other subjects that are relevant  
10 to this lawsuit.

11 9. Bill Schoonover, 14250 Lake Hills Blvd, Bellevue, WA 98007: In the  
12 event Electric Mirror does not introduce his testimony, Avalon may call Mr.  
13 Schoonover to testify regarding the receipt, inspection, processing, and assembly of  
14 mirrors for the Mandalay Bay project; selection of MirroView for the Mandalay Bay  
15 project; the reasons MGM rejected Electric Mirror's mirrors; the rebuild of mirrors for  
16 the Mandalay Bay project; Electric Mirror's alleged damages; as well as other subjects  
17 that are relevant to this lawsuit.

18 10. Eddie Nellis, 12212 NE 97th St, Kirkland, WA 98033: In the event  
19 Electric Mirror does not introduce his testimony, Avalon may call Mr. Nellis to testify  
20 regarding the receipt, inspection, processing, and assembly of mirrors for the  
21 Mandalay Bay project; selection of MirroView for the Mandalay Bay project; the  
22 reasons MGM rejected Electric Mirror's mirrors; the rebuild of mirrors for the  
23 Mandalay Bay project; Electric Mirror's alleged damages; as well as other subjects  
24 that are relevant to this lawsuit.

25 11. Jennifer Ziegler, 9604 180th St SE #A, Snohomish, WA 98296: In the  
26 event Electric Mirror does not introduce her testimony, Avalon may call Ms. Ziegler  
27

to testify regarding the receipt, inspection, processing, and assembly of mirrors for the Mandalay Bay project; selection of MirroView for the Mandalay Bay project; the reasons MGM rejected Electric Mirror's mirrors; the rebuild of mirrors for the Mandalay Bay project; Electric Mirror's alleged damages; as well as other subjects that are relevant to this lawsuit.

**Others.** Avalon reserves the right to present at trial the testimony of witnesses for whom Avalon has designated their deposition testimony as required by the rules of this Court. Avalon further reserves the right to supplement this witness list and to solicit testimony from all witnesses called to testify by Avalon. Current deposition designations include:

Deponent	Date of Deposition	Transcript
Beeman, Allen	July 16, 2018	Marked: October 10, 2018
Bernal, Irving	February 2, 2018	Marked: October 10, 2018
Boyd, Travis	March 7, 2018	Marked: October 10, 2018
Erickson, Patrick	March 8, 2018	Marked: October 10, 2018
Gallagher, Patrick	March 21, 2018	Marked: October 10, 2018
Gould, Dan	March 7, 2018	Marked: October 10, 2018
Hernandez, Robert	March 7, 2018	Marked: October 10, 2018
House, Robert	January 4, 2018	Marked: October 10, 2018
Johnson, Jim	March 8, 2018	Marked: October 10, 2018
Kaiser, Barris	January 4, 2018	Marked: October 10, 2018

## VII. TRIAL EXHIBITS

A worksheet identifying the parties' trial exhibits, including stipulations to authenticity and admissibility is attached to and filed with this Order.

VIII. ACTION BY THE COURT

- A. This case is scheduled for trial without a jury on November 13, 2018 at 9:00am
- B. Trial briefs and deposition designations must be submitted to the Court on or before November 6, 2018.
- C. The parties will disclose the identity of their proposed witnesses by the close of trial, the day before the scheduled appearance for that witness, with the exception that witnesses for a given Monday will be identified no later than 5:00 p.m. on Friday. Tuesday's witnesses would be disclosed no later than 5:00 p.m. on Sunday.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED the \_\_\_\_ day of November, 2018.

\_\_\_\_\_  
JUDGE RICHARD A. JONES

FORM APPROVED:

ELLIS, LI & MCKINSTRY PLLC

CORR DOWNS PLLC

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By: s/ Charles P. Rullman

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By: s/ Rudy Englund

AGREED PRETRIAL ORDER  
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